

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 25 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Moscow, Post Falls and Troy,)
Idaho))

MM Docket No. 96-259
RM-8970
RM-9069
RM-9070

Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(St. Maries and Spokane,)
Washington)

MM Docket No. 96-249
RM-8926
RM-9068

REPLY COMMENTS

To: The Chief, Allocations Branch:

Rook Broadcasting of Idaho, Inc. ("Rook"), by its attorney, pursuant to Section 1.415(c) of the Commission's Rules and the Commission's Public Notice, Report No. 2186, released April 10, 1997, hereby respectfully submits its reply comments with respect to both of the captioned matters (which, as explained below, were effectively consolidated by the Public Notice).

Background. Rook's direct interest in this matter began with the Commission's issuance of its Notice of Proposed Rulemaking in MM Docket No. 96-259 (DA 96-2126, released December 27, 1996) in which it proposed to allot Channel 277A to Moscow, Idaho, in response to a petition of Darin L. Siebert ("Siebert").

Two counterproposals were submitted. Rook proposed the allotment of Channel 276C1 at Post Falls, Idaho in lieu of Channel 276C2 at Coeur d'Alene, Idaho and the consequent modification of the license of its station KCDA(FM). Radio Palouse, Inc. ("RPI") requested the allotment of Channel 277A at Troy, Idaho. Both counterproposals were listed in the Commission's Public Notice, Report No. 2186, released April 10, 1997, which required reply comments to be filed within 15 days.

The same Public Notice indicated that Rook's counterproposal would also be treated as a counterproposal in MM Docket No. 96-249. That proceeding proposed the allotment of Channel 221A to St. Maries, Idaho, in response to a request by Pentacle Investments, Inc. ("Pentacle"). Pentacle's proposal had no direct connection with MM Docket 96-259 (the Moscow/Post Falls/Troy proceeding). However, the Commission noted a one-step upgrade application which had been filed by Spokane Public Radio, Inc. ("KSFC") to upgrade its station KSFC(EFM) from Channel 220A to Channel 220C2 at Spokane, Washington (File No. BPED-961210MC). In comments filed January 29, 1997, KSFC proposed to eliminate the mutual exclusivity between its application and the St. Maries' proposal by allotting Channel 278A instead of Channel 221A to St. Maries. It is that alternative proposal to use Channel 278A at St. Maries that becomes mutually exclusive with Rook's counterproposal to allot Channel 276C1 to Post Falls.

Accordingly, Rook's instant reply comments address both of these proceedings.

MM Docket No. 96-259. The mutual exclusivity here is among Siebert's proposal to use Channel 277A at Moscow, Rook's proposal to use Channel 276C1 at Post Falls, and RPI's proposal to use Channel 277A at Troy.

It is well established that the Commission's allotment priorities favor the provision of a first local service to a licensable community, rather than providing multiple services to communities which already have their own local stations (unless, that is, there is a huge disparity in their respective populations) (Revision of FM Assignment Procedures, 90 FCC 2d 88 (1982)).^{1/} As the Commission acknowledged in its Notice of Proposed Rulemaking, DA 96-2126, supra., Moscow is already well-served by four other stations. Moscow's 1990 census population is 18,519. Rook's proposal to provide a first local service to a community of roughly comparable size (the 1990 census population of Post Falls was 7,349, but had increased to 12,595

^{1/} None of the parties in this case has claimed that its proposal would provide a first or second reception service, the only priorities entitled to greater or equal consideration with that of providing a first local transmission service. Revision of FM Assignment Priorities, supra. Indeed, Rook's engineer believes that all of the areas in question are well-served with at least five full time reception services.

by 1996) is clearly to be preferred.^{2/} Also submitted herewith is an engineering statement of Owl Engineering, Inc. which calculates the populations to be served by each of the proposals considered herein. Owl finds that Rook's proposal at Post Falls would serve nearly ten times as many people as Siebert's proposal for Moscow, and therefore is to be favored on that ground as well.

The RPI proposal for Troy is not necessarily mutually exclusive with those of Siebert for Moscow or Rook for Post Falls. In Reply Comments dated March 1, 1997, Siebert submitted an engineering study demonstrating that Channel 262A could be allotted to Troy in lieu of Channel 277A. That, in turn, would remove the mutual exclusivity between Troy, on the one hand, and Moscow and Post Falls, on the other. However, if for some reason Troy still had to be considered on a comparative basis, that community would be not nearly as attractive a candidate for a first local service as is Post Falls, both due to the extreme disparity in their populations and the coverage of their proposed facilities. Thus, Troy's 1990 census population stood at 669 (representing a decline from 820 in the previous census), even

^{2/} In its Counterproposal and Comments of February 18, Rook provided an outline of the attributes of Post Falls, which underlines the need of that community for its own radio voice. Among these were an explosive growth rate of approximately 12% per year since 1990, a diverse economy with 10 businesses of 100 or more employees, an independent government with full municipal and public services; and a school system serving 4,000 students.

though RPI's counterproposal asserted that there had been a subsequent increase to slightly over 1,000. All of these figures are less than 10% of the respective populations for Post Falls. A disparity of a similar magnitude was found by Owl Engineering in comparing the proposed coverage of the Troy and Post Falls facilities (54,994 versus 518,303).

Troy's relatively small population places it squarely within the context of cases in which an ostensible need for first service was rejected in comparison to other meritorious proposals, even where multiple services were involved. See, e.g., Ruarch Associates, 99 FCC 2d 338, 341 (Rev. Bd. 1984), aff'd 101 FCC 2d 1358 (1985) (first local service preference denied to community of 752 population). The Commission must also remain cognizant of New South Broadcasting Corp. v. FCC, 879 F2d 867, 871 (DC Cir. 1989), in which the Court warned that the rigid award of a dispositive preference to any small but cognizable community "would be to handcuff the Commission and invite manipulation of its Section 307(b) policies." Here, as Siebert has already pointed out in his March 1 Reply Comments, RPI already owns two of the three commercial stations licensed to Pullman, Washington and has already applied for a third station there. It would appear that RPI's interest in this matter is in obtaining yet a fourth station in a market which it already dominates. Even then, it is unclear why it does not simply support the proposal for the adjacent community of Moscow, which

would appear to serve its purposes equally well (although perhaps the reason lies in the fact that Moscow, already extremely well-served for a community of its modest size, presents a far less attractive Section 307(b) beneficiary than would Troy). In any event, motivation aside, the fact remains that Troy, by virtue of its small size and minimal community attributes, should not be granted a Section 307(b) preference in MM Docket 96-259.

MM Docket No. 96-249 (St. Maries and Spokane). As noted above, the only connection between this docket and Docket 96-259 is KSFC's suggestion that Channel 278A be allotted to St. Maries in lieu of the initially requested Channel 221A. However, this does not appear to be a viable option. In Reply Comments of February 18, Pentacle demonstrated that it had already considered Channel 278A when preparing its own rulemaking proposal, but had to reject it. Although Channel 278A meets the Commission's hypothetical technical criteria, finding a suitable site would not be possible. Pentacle's engineering showing demonstrated that neither vehicular access nor electrical power was available to the referenced site. Conversely, distance and the intervening high terrain would preclude service to St. Maries from the nearest location at which these problems could be overcome.^{3/}

^{3/} KSFC responded in an unauthorized letter of March 25, 1997 questioning whether Pentacle had ever contacted the site owner to determine whether a lease would be possible. Undersigned counsel understands Pentacle will respond to this matter in a pleading to be filed today. Even so, the only
(continued...)

Accordingly, since Channel 278A will not work at St. Maries, there is no further need to consider MM Docket 96-249 as part of the Moscow/Post Falls/Troy matter.

Even were the two dockets to remain tied together, Rook's proposal for Post Falls is entitled to a clear Section 307(b) preference over either of the proposals in MM Docket No. 96-249. Although St. Maries may qualify as a licensable community, its population is only 2,700, a small fraction of the population of Post Falls. Even more telling, as demonstrated in the attached engineering statement, the coverage of either Channel 221A or 278A at St. Maries would be a mere 5,500, as compared to 518,303 for Channel 276C1 at Post Falls. Therefore, a first local service at Post Falls is clearly to be preferred.

The only reason to force St. Maries to shift from Channel 221A, as proposed, to Channel 278A, as urged by KSFC, would be to accommodate KSFC's upgrade from Channel 220A to Channel 220C2 at Spokane. And yet, Spokane is already well-served with 16 commercial and 6 non-commercial stations (according to the 1977 edition of Broadcasting & Cable Yearbook at pages B-484 - 485). Although Spokane's population of 177,196 is significantly greater than that of Post Falls, it is already well-served by its 22 existing stations. KSFC has not even suggested that Spokane

^{3/}(...continued)
question raised by KSFC's unauthorized letter is one of leasing arrangements, whereas Pentacle's objections to the site were on additional, unrelated bases.

needs the additional service it seeks to provide; indeed, KSFC is hardly in a position to attempt such a showing, as it already operates KPBX-FM, a full-power station (56 kilowatts, 2,380 feet) at Spokane! Accordingly, were a comparative choice to be appropriate, Post Falls would clearly prevail.

Summary and Conclusion. As detailed above, the Post Falls counterproposal is to be preferred over each of the others with which it has been consolidated herein. It will serve a significantly greater population than any of the others. The proposal from Moscow is to add a fifth facility to a relatively small community which is already well-served. The proposal for Spokane will not even do that, as it will merely upgrade a station in an extremely well-served city in which the applicant already operates a regional facility. Of the remaining communities, each seeks a first local service, but Post Falls is the most deserving due to its much greater population. Moreover, the Troy proposal need not remain mutually exclusive with that of Post Falls, since another, non-conflicting channel is available for allotment to Troy. The only basis for considering St. Maries as being mutually exclusive with Post Falls is the alternate proposal for Channel 278A, which fails for lack of a useable site.

In sum, Rook's proposal to allot Channel 276C1 to Post Falls is to be preferred over each of the other proposals to be considered herein.

Respectfully submitted,

ROOK BROADCASTING OF IDAHO, INC.

By: 

Peter Gutmann
Its Attorney

Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Washington, D.C. 20036
(202) 296-0600

April 25, 1997

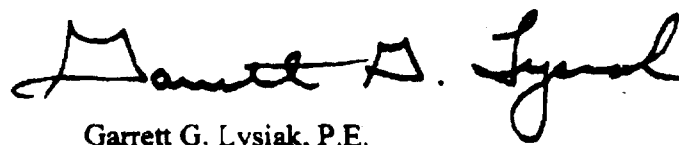


8888 Hastings St. NE, Minneapolis, MN 55449
(612) 785-4115 • Fax (612) 785-4831
1-800-797-1338

Engineering Statement

The following study determined the population for each of the proposed City and channels combinations. The data is based on the 1990 U.S. Census of Population. At each location the 60 dbu signal coverage area was determined using the procedure outlined in 73.313. The population count was made through the use of a computer program that included a data base which contained the geographic coordinates of the centroids of population groupings.

Post Falls	276 C1	518,303
Moscow	277A	52,662
St. Maries	221A/278A	5,500
Spokane	278 A	435,803
Troy	277A	54,994



Garrett G. Lysiak, P.E.

CERTIFICATE OF SERVICE

I do hereby certify that I am a secretary in the law firm of Pepper & Corazzini, and copies of the foregoing Reply Comments in MM Docket No. 96-259 were served on April 25, 1997, by first class U.S. mail, to the following:

Darin L. Siebert
South 605 Grand Avenue
Pullman, Washington 99163
(Petitioner in RM-8970)

Keith E. Lamonica
1710 Turner Drive
Pullman, Washington 99163
(Consultant for Darin L. Siebert)

David Tillotson, Esquire
4606 Charleston Terrace, N.W.
Washington, DC 20007
(Counsel for Radio Palouse, Inc.)

Leonard S. Joyce, Esquire
Attorney at Law
5335 Wisconsin Avenue, N.W.
Suite 400
Washington, DC 20015-2030
(Counsel for Pentacle Investments, Inc.)

Douglas J. Siddoway, Esquire
Randall & Danskin, P.S.
1500 Seafirst Financial Center
601 West Riverside Avenue
Spokane, Washington 99201-0653
(Counsel for Spokane Public Radio, Inc.)



Veronica Pierce